IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.19350 of 2005

Date of Decision: 07.09.2006

Rajinder etc. ..Petitioners

versus

State of Haryana and others ..Respondents

CORAM : HON'BLE MR. JUSTICE M.M.KUMAR

HON'BLE MR. JUSTICE M.M.S.BEDI

Present : Mr. J.S.Manipur, Advocate for the petitioners

Mr. Harish Rathee, Senior DAG Haryana for all the respondents

M.M.Kumar.J.(Oral)

This petition filed under Article 226 of the Constitution prays for quashing the order dated 30.12.2004 (P-3) refusing to consider the claim of the petitioners while considering the claim of their junior respondents No. 3 to 5 for promotion/adjustment as Cleaner.

It is appropriate to mention that petitioners were appointed as Beldars on work-charged basis on 12.4.1977 and their services were regularized on 13.10.1983. It is admitted position that respondent No.3 was appointed as such in 1993 and respondents No.4 and 5 were also appointed as Beldars in 1996. On the basis of length of service, the

petitioners are admittedly senior to the respondents No.3 to 5. It is also admitted that from the post of Beldar, adjustment/promotion is made to the post of Cleaner which is a feeder post for promotion as a driver. The petitioners had sent a written request to the respondents for their adjustment on the post of Cleaner on 12.8.2004. When no action was taken, then the petitioners served a legal notice on 3.12.2004 (P-2). In reply dated 30.12.2004 (P-3) to the legal notice sent on 3.12.2004 (P2), it is conceded that the petitioners are senior to respondents No.3 to 5 and being eligible were entitled to be considered for adjustment/promotion as Cleaner's but that has not been done. Again another legal notice was sent on 5.4.2005 (P-4) for obtaining a copy of the promotion order of respondents No. 3 to 5 to enable the petitioners to challenge the same in this Court.

Having heard the counsel for the parties, we are of the view that this petition deserves to be allowed. It is conceded by the respondents that the petitioners are far senior to respondents No. 3 to 5 and their case deserves to be considered for promotion/adjustment as Cleaners. The only reason given is that their name could not be considered as no report was received from their Sub-Division where the petitioners were postedwhereas report was received from the Sub-Division where respondents No. 3 to 5 were posted. It is thus evident that the non-receipt of the recommendation

in respect of the petitioners cannot constitute a ground for declining consideration of their case for adjustment as Cleaner's which is a necessaryqualification for promotion as a driver although the pay scales of both the posts of Beldar as well as Cleaner are identical. Therefore, we direct that the case of the petitioners be considered for promotion with effect from the date the respondents No.3 to 5 have been promoted to the post of Cleaner. The needful be done within a period of two months from the date a copy of this order is presented to the respondents. The writ petition stands disposed of in the above terms.

(M.M.KUMAR)
JUDGE

September 7, 2006
"ravinder'

(M.M.S.BEDI)
JUDGE